

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - - - -

WALTER BECK CORPORATION)
d/b/a THE RAINBOW INN,)

Plaintiff,)

vs.) Civil Action
No. 04-348-ERIE

SAFECO CORPORATION,)
AMERICAN ECONOMY)
INSURANCE COMPANY and)
AMERICAN STATES)
INSURANCE COMPANY,)

Defendants.)

- - - - -

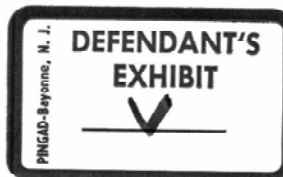
DEPOSITION OF PAUL G. SMITH

- - - - -

REPRODUCTION OF THIS TRANSCRIPT IS PROHIBITED
WITHOUT AUTHORIZATION FROM THE CERTIFYING
AGENCY

- - - - -

CERTIFIED TRANSCRIPT
NOT AN ORIGINAL



1 P. Smith - by Mr. Victoria

2 A. No.

3 Q. That the absence of a system
4 contributed to the fire?

5 A. No.

6 Q. That the failure to service the
7 system contributed to the fire?

8 A. No.

9 Q. Now, the one thing you said, you
10 said Safeco's not saying they did or did not
11 have a system in place. I'm not sure I
12 understood that. If I am misstating it,
13 correct me.

14 I understand the separate aspect of
15 a service agreement. Let's just talk about the
16 existence of a system in place or not. Is it
17 Safeco's position that there was no system in
18 place?

19 A. No. I don't know if there was a
20 system in place.

21 Q. So Safeco's sole basis for denying
22 the claim is that Safeco wasn't provided with
23 an agreement showing that a system had been
24 serviced in accordance with the agreement? In
25 accordance with the policy?

1 P. Smith - by Mr. Victoria

2 A. In accordance with the policy, yes.
3 That there was a system, that it was in place,
4 it was UL approved, that it was serviced
5 semi-annually and cleaned quarterly by an
6 independent contractor. And that was the basis
7 of my denial.

8 Q. Well, but Safeco has to -- I'm
9 getting back to the question again. Is it
10 Safeco's contention that no system was there?

11 A. Not necessarily.

12 Q. What was the results of your
13 investigation? Was there a system or wasn't
14 there?

15 A. I don't know. I don't know whether
16 there was or wasn't.

17 Q. What did you do to determine whether
18 there was or wasn't?

19 A. Inquired of the insured, proof,
20 evidence that they had a system and that it was
21 serviced quarterly. Because it's a package to
22 me. If they didn't have a system, they have a
23 problem. But if they do have a system and it's
24 not serviced according to the policy, there's
25 still an issue that we have to get Safeco and

1 P. Smith - by Mr. Victoria
2 with them. You don't have any reason to
3 believe that you didn't have a phone
4 conversation with him on June 3, 2004?

5 A. No.

6 Q. What went on during that phone
7 conversation?

8 A. I don't recall specifics, except I
9 would have been asking him for the
10 documentation we needed to get over this
11 hurdle, that this -- you had the system, that
12 it was serviced by an independent contractor on
13 that semi-annual and quarterly basis was
14 required.

15 Q. Do you recall having --

16 A. Just to the point of my supervisor
17 and myself begging him just give us the name
18 and we'll get the information.

19 Q. What was his response to you?

20 A. He was very angry, and it would go
21 off in other areas.

22 Q. Did he ever say to you, I don't know
23 who it is?

24 A. He may have.

25 Q. You don't recall?

1 P. Smith - by Mr. Victoria

2 and a Halon system?

3 A. That may well have been my error,
4 using the generic Ansul system in place of fire
5 suppression system.

6 Q. A lot of these documents relate back
7 to your initial conversation with Mr. Beck in
8 which you understood him to say that he took
9 the system out in '96 or '97, correct?

10 A. Yes.

11 Q. Do you believe that you
12 misunderstood something he said to you then?

13 A. I don't know. I been around life a
14 long time. Can there be misunderstanding,
15 we'll all walk away from this table there can
16 be misunderstanding. I believe I heard him say
17 he had the system removed.

18 Q. Was there a discussion at that time
19 about Halon versus Ansul system?

20 A. I don't recall.

21 Q. I'm just trying to get at whether
22 the use of those terms may have caused a
23 misunderstanding at that conversation.

24 A. I can't say yes or no. But that
25 February 11 denial letter was very clear what